

United States District Court  
Northern District of West Virginia

Darrell J. Williams  
Plaintiff

No. 5:20-cv-00019

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FILED

United States of America  
Defendants, et al

JUL - 7 2021

U.S. DISTRICT COURT-WVND  
WHEELING, WV 26003

PLAINTIFF'S MEMORANDUM IN OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS AND  
FOR SUMMARY JUDGMENT

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## I. Introduction

On two separate occasions the prison officials at the United States Penitentiary ~~in Bruce Mills, West Virginia~~ (USP Harts) failed in their duty to protect Plaintiff Darren Williams from brutal assaults at the hands of inmates. On the first occasion Mr. Williams had made repeated verbal and written requests to be removed from general population, and placed in protective custody, because of his fear of assault by a hostile gang members. He was ignored. Following the first assault Mr. Williams asked on multiple occasions that he not be placed back in general population (GP), because a prison gang killed his wife and he had legal documents listing Plaintiff as providing information to the government officials, and the midwest gang had a hit on Mr. Williams' life, because Mr. Williams looks like a snitch, and Mr. Williams was being tied badly by midwest inmates, if Mr. Williams returned back to GP, he would be assaulted/killed or pay protection fees. Prison officials ignored Mr. Williams' pleas, and Mr. Williams was savagely beaten a second time (Exhibit A) ~~(Exhibit A)~~

The individual defendants and United States of America (collectively, "Defendants") move to dismiss on grounds that Mr. Williams did not plead an Eighth Amendment violation with sufficient specificity. Defendants seek a level of specificity that is not supported by current Fourth Circuit law.

They also seek summary judgment on ground, that Mr. Williams failed to exhaust his administrative remedies as Plaintiff Defendants are protected by qualified immunity, or the

discretionary function exception. This portion of Defendants' motion is premature and without merit as no discovery has taken place.

Defendants' claims that Mr. Williams failed to exhaust administrative remedies is supported supported by search of the SPANTRY system that records extension correspondence. Either the SPANTRY system is flawed or Defendants' search was inadequate because Mr. Williams has a denial letter stating that he has fully exhausted his administrative remedies (SEE Ex. ~~BB~~). Defendants' supported the qualified immunity portion of their motion with various declarations that they never received any of Mr. Williams' pleas for protective custody, and a search of yet another system that supposedly records such correspondence and that allegedly came up dry. This search is of course suspect in light of the error that occurred with respect to the SPANTRY system. Defendants United States argue that it should be shielded from liability under the Federal Tort Claim (F.T.C.A.) because no individual Defendants had a duty to follow a particular course of action with respect to protecting Mr. Williams. To the contrary, several individual Defendants declared that they would have to follow specific protocol if they had only known of the risk Mr. Williams posed. (See, e.g., Decl. of Francis Van Kirk (Ex. ~~BB~~), see also, e.g., Decl. of Myrna Bridges (Ex. ~~DD~~) / also see e.g., Decl. of Howard Williams (Ex. ~~EE~~). These are exactly the sort of issues that require discovery. Summary judgment is inappropriate. Accordingly Defendants' motion should be denied.

## II. Facts

Because no discovery has taken place, Plaintiff submits that his Amended Complaint and his administrative remedy denial letter (ET F) represent his full statement of facts at this stage of proceedings. Additionally, Plaintiff submits a detailed Counterstatement and Response to Defendants' Statement of Facts "GSMR". For the Court's convenience, a summary of the facts is below.

In 2017, Darrell Williams was a inmate at USP Hazelton. The Mid West Gang of inmates labeled Mr. Williams a "snitch", because they had documents of Mr. Williams providing information to SSA to report government officials. Mr. Williams had previously been assaulted at USP Terre Haute, in 2009, and at USP Lewisburg, in 2008 and 2011, because he was labeled a snitch. (SEE US District Court for the Middle District of PA Case # 3:12-cv-1235). Mr. Williams also was in a wheel chair and suffered from significant health problems to include Cervical and Lumbar Sprains.

On April 2017, Plaintiff Darrell Williams arrived at USP Hazelton at which time Plaintiff informed a female SSS Tech that his life was in danger and that he had previously been assaulted by mid west gang of inmates and there was a hit on his life by the mid west gang of inmates. ~~Even a letter~~ (SEE A)

On April 18, 2017, I gave a cop-out to the NV FA Officer detailing my life was in danger and I requested P.C. (SEE EX G) To no avail.

On 04-18-17, I issued USA HARZ Capt (John Doe) a cop-out detailing my life was in danger, and I requested P.C. (SEE EX H) To no avail.

On 04-19-2017, I gave a cop-out to Warden Cookley and AW Keys detailing my life was in danger, and requested P.C. (SEE EX I) To no avail.

On 04-19-17, I placed a cop-out in the US Mail Box, addressed to Warden Cookley & AW Keys detailing my life was in danger and requested P.C. (SEE EX J)

On 04-19-17, I gave USA Managed Bridges a cop-out detailing my life was in danger, and requested P.C. (SEE EX K) To know avail.

On 04-19-17 I gave, KSR HARZ NV FA Officer, a cop-out, detailing my life was in danger, and requested P.C. (SEE EX L)

On 04-20-17 I gave a cop-out to USA HARZ NV FA Official, detailing my life was in danger, and requesting P.C. (SEE EX M) To no avail.

On 04-20-17, I gave a cop-out to Counselor Vankirk detailing that my life was in danger, and requested P.C. (SEE EX N) To no avail.

On 04-20-17, I gave A cop out to Warden (Sally detailing my life in danger, and requested P.C. (SEE EX 9) To be Avail.

Williams specifically warned that physical altercation was likely if he wasn't removed from GP, and placed in P.C. On 04-20-17, because those request were ignored, Williams was brutally beat with a lock attached to a belt, in the head and face, but it did not go any more (SEE EX 9).

On 04-21-17, Plaintiff mailed a cop out to the S&S Dept. detailing my life was in danger and that I not be returned to VSP HALL GP, which was to be avail. (SEE EX 9)

On 04-23-17, Plaintiff gave A cop out to Warden Sally and A key, detailing my life was in danger and not to send me to GP. (SEE EX 9) To be Avail.

On 04-27-17, Plaintiff sent a cop out to Warden Cook detailing my life was in danger and please don't send me back to GP. (SEE EX 9) To be Avail.

On 05-09-17 I sent a complaint to Congressman Wm. Lacy Clay, detailing my life being in danger, etc (SEE EX 10)

On 06-15-17, Warden Conkley responded to Congressman request, and informed Congressman Whitlacy that Mr. Williams was not in danger, and Mr. Williams was released back into Calton 05-11-17. (~~SEE EX U~~)

From 05-11-17 thru 07-27-18, I gave Capt. cuts to Warden Calley, Warden Reggs, Capt. Vint, Warden Bridges, SIS, and others. My life was in danger, and requested no-  
(SEE EX V)  
to no admit

On 08-01-18, Mr. Williams was again assaulted, hit in the head with a belt attached to a belt, by a prison guard inmate in the cafeteria. (SEE EX W)

Mr. Williams, receive stitches on his head, he suffers lasting nerve damage, episode of dizziness.

### III Argument

#### A. Motion to Dismiss Legal Standard

In reviewing a motion to dismiss a claim under Federal Rule of Civil Procedure 12(b)(6), a district court must

"accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cat. of Allegany*, 515 F.3d 224, 230 (3rd Cir. 2008). The notice pleading standard of Rule 8(a)(2) does not require "detailed factual allegations." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Indeed, a court may not dismiss a complaint merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits. See *Phillips*, 515 F.3d at 231 (citing *Twombly*, 550 U.S. at 556). The notice pleading standard requires only that the complaint "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 570).

## B. Defendant's Motion to Dismiss Plaintiff's Failure to Protect Claim Should Be Denied.

"Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offense against society." See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Accordingly, prison officials have "a duty to protect prisoners from violence at the hands of other prisoners" under the Eighth Amendment. To allege a breach of this duty, the plaintiff "must plead facts that show (1) he was incarcerated under conditions posing a substantial risk ~~to his health or~~ ~~and safety~~ of serious harm, (2) the official was deliberate indifference ~~caused~~ to that substantial

risk to his health and safety and (3) the efforts to deliberate indifference caused him harm".

*Bisarian v. Levi*, 696 F.3d 350, 367 (2012) (citing *Farmer*, 511 U.S. at 834).

Here Mr. Williams repeatedly asked Defendant's to remove him from G.P. because he has serious medical problems, had been labeled a "snitch," and, most notably, had repeatedly warned Defendants of the danger he faced. ~~§ 506~~ Indeed, the second attack occurred months after the first attack.

Defendants attempt to argue otherwise, claiming that Plaintiff's well-pleaded facts amount to nothing more than "conclusions" which, according to Defendants, "are not entitled to the assumption of truth." Defendants rely only on *Bisarian* in support of this position, ~~the~~ (citing *Bisarian*, 696 F.3d at 365). But this position fundamentally mischaracterizes the pleading standard articulated in *Bisarian*, and as such Defendants' argument falls flat.

In *Bisarian* the Third Circuit adhered to a pleading standard that was entirely consistent with well-established Supreme Court law. See 696 F.3d at 365 (citing *Iqbal*, 556 U.S. at 675-679; *Thompson*, 550 U.S. 544). The Third Circuit provided the following calculus for determining whether a complaint meets the notice pleading standard:

First, we outline the elements a plaintiff must plead to state a claim for relief. Next, we peel away those allegations that are no more than conclusions and thus not entitled to the assumption of truth. Finally, we look for well-pled factual allegations. Assume their truth, we look for well-pled factual allegations. Assume their veracity, and then determine whether they plausibly give rise to an entitlement to relief.

*Id.* The second step - whether an allegation is no more than a conclusion - is guided by the analysis of Supreme Court. See *id.* (citing *Iqbal*, 556 U.S. at 679). *Iqbal* determined that "threadbare recitals of a cause of action's elements supported by mere conclusory statements" are not entitled to the assumption of truth. *Id.* On the contrary, when a complaint contains well-pled factual allegations, "A court should assume their veracity." *Id.*

Mr. Williams' allegations are much more than "threadbare recitals of a cause of action's elements." Mr. Williams alleged that he suffers from serious medical condition and has been hired a snitch. Additionally, Williams alleged that Defendants knew from experience that inmates perceived to be adversaries of a particular gang

members were at risk of harm by other members of the same gang" and that "the risk of harm to such inmates was ~~high~~ heightened if they were physically ill and unable to defend themselves". He further alleged that, prior to each attack, he provided repeated verbal and written warnings to Defendants that such an attack was imminent. These are the type of factual allegations that Bistran deemed sufficient. See 696 Fed. App. 369-69 (Bistran plausibly alleges that certain prison officials actually knew that he faced an excessive risk of harm by being placed in the SHU recreation yard... because he repeatedly advised (both verbally and in writing) FDC officials "... of the multiple threats").

Nothing in Bistran suggest Plaintiff was required to define "snitch" ~~or~~ for the prison officials, or allege how it is that such a label creates a risk in a prison population. Moreover, Defendants mischaracterize the Amended Complaint by arguing "Plaintiff does not identify the contents with sufficient specificity. He alleged that he made approximately thirty, distinct written notices to individual defendants, 'specifically warning that a physical altercation was likely if he was not placed on P.C. status.. And he alleged that P.C. was necessary 'urgently' and ASAP". Nothing in

Bistran suggest that these factual allegations should be reduced to legal conclusions underscoring of the assumption of truth. According, Defendants motion to dismiss should be denied.

### C. Defendants Motion For Summary Judgment Is Premature

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact". Fed. R. Civ. P. 56(a). A disputed fact is material if proof of its existence or nonexistence would change the outcome of the case. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, at 247-48 (1986). In making this determination, the court must view all of the facts and all reasonable inferences in favor of the nonmoving party. See *Moore v. Taler*, 906 F.2d 1682 (3d Cir 1993).

It is well-settled that motions for summary judgment under Rule 56 are predicated on premise that all parties have had an adequate opportunity to conduct discovery. See *Libtex Corp. v. Atchaf*, 477 U.S. 317, 323-26 (1986) (summary judgment appropriate only "after adequate time for discovery"); *Anderson* 477 U.S. at 247 (summary

judgment reserved until plaintiff has had a full opportunity to conduct discovery"); *Doe v. Abington Friends Sch.*, 480 F.3d 252, 257 (3rd Cir. 2007) ("If discovery is incomplete in any way material to a pending summary judgment motion, a district court is justified in not granting the motion."); *Dawling v. City of Philadelphia*, 855 F.2d 136, 139 (3rd Cir. 1988) ("The court is obliged to give a party opposing summary judgment an adequate opportunity to obtain discovery.") This is ~~especially~~ especially true here when the nonmovant has had no opportunity to conduct any discovery, and all of the supposed "record" was produced by the alleged wrongdoers, as is the case here. See *Paller v. Columbia Broadcasting Sys. Inc.*, 368 U.S. 464, 473 (1962).

Premature motions can be adequately dealt with under Rule 56(f) now Rule 56(d), which allows a summary judgment motion to be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery." *Celotex*, 477 U.S. At 326. Moving under Rule 56(d) is particularly appropriate "when there are discovery requests outstanding or relevant facts under the control of the moving party." *Abington Friends Sch.*, 480 F.3d At 257. Rule 56(d) prescribes only that "a nonmovant show, by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition."

Mr. Williams by prose provides a particularized statement of the discovery necessary for him to develop his claims. See *Ex. —* } For instance, Williams needs a opportunity to take the depositions of individual Defendants and other facts witnesses, because Defendants state of mind and motivations in regards to their acts or failures to act is highly relevant to the allegations in the amended Complaint. (Id.) Additionally, Williams holds documents reflecting the procedures and practices regarding safety. (Id.)

Since Mr. Williams has been afforded no opportunity to take discovery, let alone a reasonable one, and has submitted a particularized Affidavit detailing his need for discovery, this Court should deny Defendants motion or at least defer its resolution until Williams has had a reasonable opportunity to obtain discovery. See *Murphy v. Millennium Radio Grp. LLC*, 650 F.3d 295, 309-310 (3rd Cir. 2019) (granting request of party who had no opportunity for discovery as a matter of course).

#### ii. Plaintiff Exhausted His Administrative Remedies

Summary judgment is inappropriate for failure to exhaust administrative remedies, because Mr. Williams has created a genuine issue of facts about whether he has exhausted his remedies.

Defendants have submitted a declaration and documents purporting to show that Williams failed to exhaust his administrative remedies. ~~However~~ But Williams has his denial letter, and unasked administrative remedies, proving that he fully exhausted. (See Ex —).) Either Defendants conducted an inadequate search of the SENTRY system, or the system itself is inaccurate. Certainly, summary judgment for failure to exhaust is not proper.

## 2. Defendants Are Not Entitled to Qualified Immunity

Genuine issues of material facts exist as to whether the individual Defendant's conduct violated Mr. Williams' clearly established constitutional rights, the critical inquiry in assessing qualified immunity. The doctrine of qualified immunity insulates government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See *Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982). Whether a government official is entitled to qualified immunity involves a two-step analysis. See *Saucier v. Katz*, 533 U.S. 794, 801 (2001). Immunity depends

on? (1) whether ~~the~~ the facts Alleged by Mr. Williams show the violation of A constitutional right; And (2) whether the right ~~the~~ issue was clearly established at the time of the alleged misconduct. See *id.*, "Just as ~~summary~~ the granting of summary judgment is inappropriate when a genuine issue exists as to any material fact, a decision on qualified immunity will be premature when there are unresolved disputes of historical facts relevant to the immunity analysis." *Culley v. Klem*, 298 F.3d 271, 278 (3d Cir. 2007). Thus, if there are material disputes as to facts relevant to the ~~qualified~~ qualified immunity analysis, summary judgment is inappropriate. See *Estate of Smith v. Mahasco*, 430 F.3d 140, 148 (3d Cir. 2005).

Defendants do not dispute that Mr. Williams had a clearly-established constitutional right to be reasonably protected from violence at the hands of other prisoners. They instead repackage their motion to dismiss argument that they were not aware of the danger confronting Mr. Williams. And that he has not pled with sufficient particularity the contents of his communications. That argument fails for the reasons set forth above.

They now add to claiming that they never received Any of Mr. Williams communications, and That the SEARCH of yet another database has not retrieved Any of Mr. Williams letters. (Certainly the Court should be skeptical) of the Defendants representations with respect to the results of such a SEARCH, given the established inadequacy of their SEARCH for evidence of Mr. Williams extrajurisdiction letters.

Precisely because individual Defendants declare that they never received those letters from Mr. Williams, nor had discussions with Mr. Williams, nor conducted any investigation into the serious danger danger he faced, material disputes as to facts relevant to the qualified immunity analysis have been created.

Further, Mr. Williams alleges that he was attacked by two members of the same gang within months. Certainly after Mr. Williams correctly predicted the initial assault in April 2017, a material issue of facts exist as to whether Defendants should have paid greater heed to his warnings prior to the Aug 2018 ASSAULT.

Accordingly, a decision on qualified immunity would be inappropriate at this stage of litigation. See *Estate of Smith* 430 F.3d 140.

### 3. Plaintiff's Claims Against the United States Are Not Barred by the Discretionary Function

The United States can avoid FTCA liability under the discretionary function exception, 28 U.S.C. 2680(a), only if it meets two requirements. See *U.S. v. Gaubert*, 1499 U.S. 315, 322 (1991) (outlining two-step analysis). First, the negligent act must be one of judgment or choice. Id. (nothing that requirement cannot be "satisfied if federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow.") Second, if the act did indeed involve discretion, the United States must still show it was the type of discretion the exception ~~was~~ ~~was~~ intended to protect, with a focus on whether the behavior was based on public policy considerations. Id. At 322-23.

Defendant's United States Argument fails to meet either requirement. The United States relies on *Bimaldi v. United States* for the proposition that "there is no federal statute, regulation or policy that require the BOP to take a particular course of action to ensure an inmate's safety from attacks ~~from~~ by other inmates." (quoting *Bimaldi* 460 Fed. Appx. 80, 81 (3d Cir. Feb 3, 2012) (internal quotations omitted)). This reliance is misplaced; however, because in this case, several individual defendants

concede that they had policies in place to protect Mr. Williams as follows:

If an inmate would have expressed concerns for his safety to me, either orally or in writing, I would have referred the drum to the Lt. or S.I.S. for investigation and appropriate action. ~~If there was~~  
~~immediate safety concern I would have~~  
~~re-assigned the~~

(Cecil of Myrna Bridges (Ex -)) See Also, (Cecil of Francis Van Kirk (Ex -)). Moreover, individual Defendants after refusal to aid Mr. Williams is not the type of policy decision intended to shield liability. See *Gaubert*, 499 U.S. at 322-23.

Thus discovery is critically necessary to determine whether these recognized duties were triggered, and summary judgment at this early stage is inappropriate.

#### IV. Conclusion

Plaintiff Williams has plausibly alleged facts that state claims against Defendants, and as such, he is entitled to discovery on these claims. This motion is premature in this case. Defendants' hand-picked documents and declarations free from

CROSS-EXAMINATION: All well short of a true record as contemplated by Rule 56.

For the foregoing reasons, Mr. Williams request that the Court deny Defendants motion to Dismiss And for Summary Judgment in it's entirety.

Respectfully



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## CERTIFICATE OF SERVICE

I, Williams, Darrell, hereby certify that I have served a true and correct copy of the foregoing:

Plaintiff's Memo in Opposition to Defendants  
Motion for Dismissal and for Summary  
Judgment.

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston vs. Lack, 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and/or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to: Court Clerk

E  
AUSA

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 11<sup>th</sup> day of June, 2021

Respectfully Submitted,

Darrell Williams

REG. NO.